### PATTON BOGGS

RECEIVED FEDERAL ELECTION COMMISSION

2012 JAN -4 AM 8: 39

2550 M Street, NW Washington, DC 20037 202-457-6000

CELA

Facsimile 202-457-8315 www.pallonboggs.com

December 31, 2011

William J. McGinley 202-457-6561 wmcginley@pattenbuggu.com

VIA E-MAIL
Jeff S. Jordan, Esquire
Supervisory Attorney
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re-

**MUR 6510** 

The Honorable Mark S. Kirk

Kirk for Senate, and Paul Kilgore, as Treasurer

Dear Mr. Jeadan:

Please find attached the response of our clients, The Honorable Mark S. Kirk, Kirk for Senate ("KFS"), and Paul Kilgore, as Treasurer, to the Federal Election Commission's ("Commission") notification that a complaint has been filed against them in the above-referenced matter.

As we stated in previous correspondence, please note that Frank Considine is KFS's Treasurer. Paul Kilgore serves as Assistant Treasurer. The enclosed documents list Paul Kilgore as Treasurer because that is how he is listed in the notification KFS received from the Commission. Please let us know if you would like us to submit another Statement of Designation of Counsel signed by Mr. Considine.

Please do not hesitate to contact me with any questions.

Respectfully submitted

William J. McGialley

**Enclosures** 

RECEIVED FEDERAL ELECTION COMMISSION

### BEFORE THE FEDERAL ELECTION COMMISSION 2012 JAN -4 AM 8: 30

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### RESPONSE OF KIRK FOR SENATE, AND PAUL KILGORE AS TREASURER, AND THE HONORABLE MARK S. KIRK TO THE COMPLAINT IN MUR 6510

This responds on behalf of our clients, Kirk for Senate, and Paul Kilgore as Treasurer ("Campaign"), and The Honorable Mark fi. Kirk (collectively "Ruspendents"), to the notification from the Federal Election Commission ("Commission") that a complaint was filed against the Respondents in the above-referenced matter.

The complaint, filed by Senator Kirk's ex-wife, is nothing more than an unfortunate personal attack designed to publicly embarrass Senator Kirk. The Complaint itself does not actually allege facts showing that any wrongdoing occurred and fails to provide any evidence to support its baseless allegations.

As explained below, the Campaign correctly listed on its FEC report payments to the Patterson Group - a long-standing media vendor that had provided such services to Senator Kirk's previous congressional campaigns. The Patterson Group served as a vendor for the Kirk Campaign from its interprism in July 2009 until early September 2010. There was no effort to conceal those payments, as erroneously sileged in the Complaint. Further, the Campaign received bosa fide services from the Patterson Group. As is typical in campaigns, the Patterson Group used a sub-vendor, Van Ness, LLC, to assist with its media placement and message management services. The Complaint does not provide any information or cite to any evidence to the contrary. Accordingly, the Commission should dismiss the complaint, close the file, and take no further action.

I. THE CAMPAIGN'S DISCLOSURE REPORTS SHOWED ITS PAYMENTS TO THE PATTERSON GROUP. THERE IS NO STATUTORY OR REGULATORY REQUIREMENT FOR A CAMPAIGN TO DISCLOSE ITS BRIMARY VENDORS' PAYMENTS TO SUBCONTRACTORS.

The Federal Election Campaign Act, as amended (the "Act"), and Commission regulations do not require a candidate's authorized committee to disclose on its reports the payments made by a primary vendor to its sub-contractors. Rather, the Act and Commission regulations merely require authorized committees to disclose "the name and address of each person to whom an expenditure in an aggregate areasent or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount and purpose of such operating expenditure." Since the Campaign contracted only with the Patterson Group to provide services, there is no requirement that the Campaign list all the sub-vendors with whom the Patterson Group may have agreements to perform the services the Patterson Group performed for the campaign.

Similarly, Commission regulations provide:

- (4) Itemization of disbursements by authorized committees. Each authorized committee shall report the full name and address of each person in each of the following categories, as well as the information required by each category.
  - (i) Each person to whom an expenditure is an aggregate emount or value in excess of \$200 within the election cycle is made by the reporting authorized committee to meet the authorized committee's operating expenses, together with the date, amount and purpose of each expenditure.<sup>2</sup>

In addition, in Advisory Opinion 1983-25, the Commission held that a campaign is required to disclose its payments to a media vendor, but there is no requirement to disclose the payments to the

<sup>&</sup>lt;sup>1</sup> 2 U.S.C. § 434 (b)(5)(A) (entplusis added); we also § 434 (b)(\$\tilde{e}\$(A) ("for an anticodisted committee, the rume and address of each person who has received any disbursement not disclosed under paragraph (5) in an aggregate amount or value in excess of \$200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of any such disbursement".).

<sup>&</sup>lt;sup>2</sup> 11 C.F.R. § 104.3(b)(4) (emphasis added).

media vendor's sub-contractors in connection with the services provided to the campaign. *Id.*("[P]ayments to Consultants may be reported as Committee expenditures without further itemization of other entities that receive payments from Consultants in connection with services under the Committee contract.").3

In this matter, the Complainant specifically acknowledges that the Campaign reported its payments to the Patterson Group for its services. Paragraph 7 of the Complaint contains her estimation of the payments made by the Campaign to the Patterson Group based upon "FEC Reports" and multiple pages of the Campaign's reports disclosing payments to the Patterson Group are attached to the Complaint as Exhibit B. There is no credible basis for a reporting violation against the Campaign since there is no statutory, regulatory or other Commission precedent requiring the Campaign to disclose payments made by a primary vendor to that vendor's subvendors.

II. THE PATTERSON GROUP IS AN ESTABLISHED MEDIA VENDOR THAT PROVIDED SERVICES TO SENATOR KIRK'S PRIOR CONGRESSIONAL CAMPAIGNS.

Contrary to the erroneous allegations in the Complaint, the Patterson Group was not retained by the Campaign as a result of any "scheme." Rather, the Patterson Group was also a media vendor to Schator Kirk's 2006 and 2008 congressional campaigns as well as his 2010 senatorial campaign. Senator Kirk's 2006 and 2008 congressional campaigns' FEC reports clearly show that the Patterson Group provided media services to those congressional campaigns. See Exhibits A (Eric Elk Affidavit) & B (Sample 2006 and 2008 Congressional Campaign FEC Reports).

The FEC did make legislative recommendations to Congress from 1985 through 1997 to "clarify" whether the reporting of "secondary payees" was required. See, e.g., 1997 Legislative Recommendations. Available at <a href="http://www.fec.gov/law/feca/feca.shtml#legislation">http://www.fec.gov/law/feca/feca.shtml#legislation</a>. But the fact that the FEC unsuccessfully requested clarification on this subject for 12 years is also indicative of current law.

Rob Vail provided media services to the congressional campaigns before 2006 through a different media company.

For the 2010 Senate campaign, the Patterson Group was a paid campaign media vendor from approximately July 2009 through early September 2010. See Exhibit A (Eric Elk Affidavit).

Ms. McCracken, through the Patterson Group, assisted with media placement and message management services. She assisted the Patterson Group with the media placement services with the input she received from the campaign during regular conference calls and meetings with Campaign staff and other wanders. See is. Mentzer Media, a national media firm, was retained by the Campaign in early September 2010. See id.

Against this backdrop, the Complaint makes allegations that reflect personal opinions.

Whatever her personal motivations, the Complaint does not provide evidence of any violation of the Act or Commission regulations.

### III. CONCLUSION.

As stated before, this Complaint by a former wife does not rise to the level of alleging violations of the Act or Regulations. This requires quick dismissal of this matter.<sup>4</sup>

<sup>\*</sup> Commissioners Wold, Mason, Thomas, Statement of Reasons, MUR 4850 ("A mere conclusory accusation without any supporting evidence does not shift the burden of proof to respondents.... The burden of proof does not shift to a respondent merely because a complaint is filed."); Commissioners Mason, Sandstrom, McDonald, Smith, Thomas, Wold, Statement of Reasons, MUR 5141 ("A complainant's unwarranted legal conclusions from asserted facts, will not be accepted as true."). Also, the complaint's speculative accusations are not a sufficient basis for finding reason to believe — especially in light of the evidence included with this reply. Commissioners Mason, Sandstrom, Smith, Thomas, Statement of Reasons, MUR 4972 ("Mere speculation will fact support an RTB finding."); Commissioners Mason, Sandstrom, Smith, Thomas, Statement of Reasons, MUR 4960 ("Such purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred.").

For the foregoing reasons, the complaint is without merit and there is no factual or legal basis for finding reason to believe in this matter. We respectfully request that the Commission dismiss the complaint, close the file, and take no further action in this matter.

William J. McGirley

Glenn M. Willard

PATTON BOGGS LLP 2550 M Street, NW Washington, DC 20037

P: (202) 457-6000 F: (202) 457-6315

December 31, 2011

# Exhibit B

FEC FORM 3

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